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In the Supreme Court

OF THE

United States

OCTOBER TERM 1945

No. 1113

COUNTY OF MARIN, STATE OF CALIFORNIA,
Petitioner,

vs.

JAMES S. PEDROTTI, also known as STEPHEN PEDROTTI, MARLYN PEDROTTI, MRS. ANGIE MINER, now known as ANGIE BOLTZ, MRS. RUBY BRIEN, MRS. KATHERINE COBB, SAM PEDROTTI, MRS. EUNICE BAUCHERO, MRS. JULIA ESTELLE BEAUREGARD, MRS. MAE GHISLETTO, RALPH PEDROTTI, MRS. BEATRICE M. CAPUCETTI, MRS. ERNESTINE B. PRONINI, GUSSIE K. PEDROTTI, now known as GUSSIE K. GRAHAM, MRS. SANTINA CERINI, MRS. SAVINA CERINI, MRS. EVA PEDROTTI and MARTIN PEDROTTI,
Respondents.

PETITION FOR WRIT OF CERTIORARI

to the Circuit Court of Appeals for the Ninth Circuit

and

BRIEF IN SUPPORT.

CARLOS R. FREITAS,
Counsel for Petitioner.

A. E. BAGSHAW,
District Attorney,
Marin County, California,
Of Counsel.

Subject Index

Page

I. Petition for writ of certiorari:
- Summary statement of the matter involved 2
- Opinion below 4
- Statement of basis of jurisdiction 5
- Questions presented 6
- Reasons relied upon for allowance of writ 6

II. Brief in support of petition:
1. Opinion of the court below 9
2. Statement of jurisdiction 10
3. Concise statement of the case 10
4. Specification of Errors 10
5. Summary of argument 10

Argument

1. The Circuit Court of Appeals erred in holding that the respondents at the time of the taking by condemnation, had an interest in the property of a compensable value 11
2. The Circuit Court of Appeals erred in holding that the testators intended the word "sale" to be synonymous with "convey" and to include a taking by condemnation 16
3. The Circuit Court erred in holding that the cy pres doctrine could not be applied to the facts found to exist and the trust be thus preserved 20
4. The Circuit Court erred in holding that the respondents and not the petitioner, were entitled to receive the condemnation award 25

Table of Authorities Cited

Cases

Pages

American Creameries Co. v. Armour (Wash.) 271 Pac. 896..... 7

Beard's Erie Basin, Inc., vs. People of New York, 2 Circ. 142 Fed. (2d) 487 16

Commissioner of Internal Revenue v. Kieselbach, 3 Circ. 127 Fed. (2d) 359 7

Hawaiian Gas Products v. Commissioner of Internal Revenue 9 Circ. 126 Fed. (2d) 4, cert. den. 317 U. S. 653..... 7

In re Wilkey's Estate, 337 Penn. 129, 10 Atl. (2d) 425..8, 22, 23, 24, 26

Iowa v. McFarland (Five per cent cases) 110 U. S. 471..... 7

Lutes v. Louisville & Nashville R.R. Co., 158 Ky. 259 164 S. W. 792 7

Lyford v. City of Laconia 75 N. H. 220; 72 Atl. 1085..... 7

People of Puerto Rico v. United States 1 Circ. 132 Fed. (2d) 220; cert. den. 319 U. S. 752, 63 S. C. 1165.....7, 14, 15, 25

Romero v. Dept. of Public Works, 17 Cal. (2d) 189.....7, 12, 13, 25

Scott Vs. Toledo, (C C) 36 Fed. 385 17

State vs. Federal Square Corporation, 89 N. H. 538; 3 Atl. (2d) 109 .....7, 8, 20, 21, 22, 24, 25, 26

United States vs. 16 acres of land, etc., (D. Ct. Mass.) 47 Fed. Supp. 603 .....7, 11, 12, 13, 14

United States vs. 1119.15 acres of land (D. Ct. E. D. of Ill.) 44 Fed. Supp. 449..... 7, 14

United States v. Certain Parcels of Land in Loyalstock Tp., etc. (D. Ct. M. D. of Penn.) 51 F. Supp. 811..... 7

Statutes

	Pages
Act of Aug. 1, 1888, Ch. 728, Sec. 1 & 2, 25 Stat. 357 as amended, U. S. C. Title 28, Secs. 257 & 258	5
Act of Feb. 26, 1931, Ch. 307, Sec. 1, 46 Stat. 1421, U. S. C. Title 28, Sec. 258(a)	5
Judicial Code:	
Sec. 24, One, as amended	5
Sec. 128(a)	6
Sec. 240 (a), 43 Stat. 938, Act of February 13, 1925, U. S. C. Title 28, Sec. 347 (a)	5

Miscellaneous

Corp. Jur. Vol. 55, page 36, Sec. 1	17
Uniform Sale Act, Sec. 1, Sub. 2	17

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COUNTY OF MARIN, STATE OF CALIFORNIA,
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JAMES S. PEDROTTI, also known as STEPHEN PEDROTTI, MARLYN PEDROTTI, MRS. ANGIE MINER, now known as ANGIE BOLTZ, MRS. RUBY BRIEN, MRS. KATHERINE COBB, SAM PEDROTTI, MRS. EUNICE BAUCHERO, MRS. JULIA ESTELLE BEAUREGARD, MRS. MAE GHISLETTO, RALPH PEDROTTI, MRS. BEATRICE M. CAPUCETTI, MRS. ERNESTINE B. PRONINI, GUSSIE K. PEDROTTI, now known as GUSSIE K. GRAHAM, MRS. SANTINA CERINI, MRS. SAVINA CERINI, MRS. EVA PEDROTTI and MARTIN PEDROTTI,
Respondents.

PETITION FOR WRIT OF CERTIORARI

To the Honorable Harlan Fiske Stone, Chief Justice of the United States, and to the Honorable Associate Justices of the Supreme Court of the United States:

Your petitioner, the COUNTY OF MARIN, a political subdivision of the State of California, respectfully prays that a writ of certiorari issue to review the judgment of the United States

Circuit Court of Appeals for the Ninth Circuit (R. 293), entered January 10, 1946 (rehearing denied February 26, 1946), (R. 301), in an action numbered and entitled on its docket, No. 10,864, JAMES S. PEDROTTI, et al., Appellants, vs. *County of Marin, State of California,* Appellee, reversing the judgment of the United States District Court for the Northern District of California, Southern Division, (R. 62), in favor of the petitioner for the sum of $41,523.00, this being the sum deposited in the Registry of the Court by the United States of America as just compensation for the taking, by the United States of America, under the power of eminent domain, of certain lands, title to which was claimed by the petitioner.

SUMMARY STATEMENT OF THE MATTER INVOLVED.

On November 9, 1933, Matthias Joseph Pedrotti, a resident of the County of Marin, State of California, died leaving a will which contained the following provision (R. 98):

> "I give, devise and bequeath my home ranch at Ignacio, Marin County, California, commonly known as the Pedrotti ranch, containing 263 acres of land more or less, to the County of Marin. Said ranch shall be kept by said County of Marin, and the net income derived therefrom shall be used by said County of Marin for the aid and relief of crippled and blind bona fide residents of the County of Marin, who are in need. Said County of Marin shall at no time sell or mortgage said property, or attempt to sell or mortgage the same, and in the event that said County of Marin should attempt to sell or mortgage or sell or mortgage the said property, then it shall forfeit all rights to said property, and said property shall forthwith revert to and become the property of my heirs at law, according to the laws of succession of the State of California.

> "This gift to said County of Marin is given in memory of my deceased wife, Henrietta G. Pedrotti, and said ranch shall, upon its distribution to said County of Marin, be known as, and called the Henrietta G. Pedrotti Memorial Farm."

In accordance with this devise the ranch was distributed to Marin County which accepted it under the terms of the will; setting the income up in a special fund called the "Pedrotti Memorial Fund" and using it for the purposes provided in the will. No attempt to sell or mortgage the property was made by the County of Marin and it continued to comply with the provision of the will until May 21, 1942, on which date the United States of America filed its complaint in condemnation (R. 2) and declaration of taking of the property (R. 8), alleging that said lands were necessary to provide for the extension of Hamilton Field, a military air field.

The complaint and declaration of taking were filed in the United States District Court for the Northern District of California, Southern Division and there was deposited in the Registry of the Court $43,550.00, the estimated just compensation for the taking of the property. Only the County of Marin was named other than fictitiously as a party defendant in the original proceedings. However, on July 19th, 1943, the seventeen persons named as respondents herein appeared and answered (R. 18) as defendants designated in the complaint by fictitious names, alleging that they were the heirs at law of MATTHIAS JOSEPH PEDROTTI, deceased; that by his will he had created an express trust; that the purposes for which that trust had been created had ceased and that the estate of the County of Marin had likewise ceased in that the taking of the property by the United States of America had destroyed the purpose of

said trust, towit: the creation of a memorial to the deceased wife of the testator.

For a further, separate and distinct answer, they alleged that the County of Marin, as trustee, had sold or attempted to sell the property in question, contrary to the express provisions of the trust, and had thereby forfeited its title to the property. Hence they prayed that the entire compensation for the taking of the property be awarded to them.

In the trial court the defendants stipulated and agreed to the payment of $2,027.00 to one M. S. Amaral for his leasehold interest in the property. The question before the District Court and before the Circuit Court was whether the remaining $41,523.00 should be paid to the County of Marin or to the heirs of the decedent Pedrotti.

OPINION BELOW.

The opinion of the District Court (R. 46) is not reported. Briefly, it was therein concluded:

(a) That, while condemnation will be deemed a "sale" for certain limited purposes, the testator Pedrotti did not intend to include condemnation in the term "sale".

(b) That the preservation of the ranch as a memorial was not such an essential object of the trust that its impossibility would cause the trust to fail; that, by means of the cy pres doctrine, the County of Marin could apply the condemnation award to a closely allied purpose by investing the award in a memorial fund to be used for the aid of the County's needy crippled and blind.

(c) That the entire compensation should be awarded to the County of Marin.

The opinion of the Circuit Court of Appeals (R. 294) is not yet reported. Briefly, it was therein concluded:

(a) That the testator Pedrotti intended the word "sale" to be synonymous with the word "convey" and to include a taking by condemnation.

(b) That the testator's primary purpose was to preserve the home ranch as a perpetual memorial to his deceased wife, and the charitable purpose was but secondary and incidental; that the primary purpose having become impossible of fulfillment, the trust must fail and the cy pres doctrine was not applicable.

(c) That the entire compensation be awarded to the heirs at law of testator Pedrotti.

STATEMENT OF BASIS OF JURISDICTION.

The judgment of the Circuit Court of Appeals was entered January 10, 1946 (R. 293). Rehearing was denied February 26, 1946 (R. 30!).

The three months period for filing this petition begins to run from February 26th, 1946. Jurisdiction of this court is invoked under Act of February 13, 1925, Ch. 229, Sec. 1, 43 Stat. 938, as amended, Judicial Code, Sec. 240(a), U. S. C. Title 28, Sec. 347(a).

Jurisdiction was conferred on the District Court by Section 24, One, of the Judicial Code, as amended, and by Act of August 1, 1888, Ch. 728, Sections 1 and 2, 25 Stat. 357, as amended, U. S. C. Title 28, Sections 257 and 258, and by Act of February 26, 1931, Ch. 307, Sec. 1, 46 Stat. 1421, U. S. C. Title 28, Sec. 258 (a).

Its judgment was entered May 29, 1944 (R. 62). Within three months, and on August 4, 1944, notice of appeal was filed (R. 69), pursuant to Section 128 (a) of the Judicial Code, as amended.

QUESTIONS PRESENTED.

Whether the Circuit Court of Appeals erred:

1. In holding that the respondents at the time of the taking, had an interest in the property of a compensable value;

2. In holding that the testator Pedrotti intended the word "sale" as used in his will to include a taking under the power of eminent domain;

3. In holding that the cy pres doctrine could not be applied to the facts found to exist and the trust thus preserved.

4. In holding that the petitioner is not entitled to recover the $41,523 deposited in the Registry of the Court and agreed by all parties to be just compensation for the taking, after the payment of a stipulated sum to the tenant in possession.

REASONS RELIED UPON FOR ALLOWANCE OF WRIT.

1. The decision of the Circuit Court, insofar as it holds that, at the time of the taking of the property under eminent domain, the respondents had an interest in the property of a compensable value, ignores, but is directly contrary to the following decisions, in all of which it has been held that when property is granted subject to a condition the occurrence of which will cause a reversion, unless the termination of the determinable estate is imminent for reasons other than condemna-

tion, the possibility of reverter has no compensable value in a condemnation proceeding, and the award should be granted the holder of the fee.

Romero v. Dept. of Public Works, 17 Cal. (2d) 189;

People of Puerto Rico v. United States, 1 Circ. 132 Fed. (2d) 220; cert. den. 319 U. S. 752, 63 S. C. 1165;

Lutes v. Louisville & Nashville R. R. Co. 158 Ky. 259 164 S. W. 792;

Lyford v. City of Laconia 75 N. H. 220; 72 Atl. 1085;

United States v. 16 acres of land, etc., (D. Ct. Mass.) 47 Fed. Supp. 603;

United States v. 1119.15 acres of land (D. Ct. E. D. of Ill.) 44 Fed. Supp. 449;

2. The decision of the Circuit Court, insofar as it holds that the testator intended the term "sale" as used in his will to be synonymous with "convey" and to include a taking under eminent domain, ignores, but is directly contrary to *State v. Federal Square Corporation,* 89 N. H. 538; 3 Atl. (2d) 109, and misconceives, and so is directly contrary to the following decisions:

Iowa v. McFarland (Five per cent cases) 110 U. S. 471;

Hawaiian Gas Products v. Commissioner of Internal Revenue, 9 Circ. 126 Fed. (2d) 4, cert. den. 317 U. S. 653;

Commissioner of Internal Revenue v. Kieselbach, 3 Circ. 127 Fed. (2d) 359;

United States v. Certain Parcels of Land in Loyalstock Tp. etc. (D. Ct. M. D. of Penn.) 51 F. Supp. 811;

American Creameries Co. v. Armour (Wash.) 271 Pac. 896;

3. The decision of the Circuit Court, insofar as it holds that the cy pres doctrine could not be applied to the facts found to

exist, and the trust thereby preserved, ignores, but is directly contrary to the following decisions:

State Vs. Federal Square Corporation, supra,
In re Wilkey's Estate, 337 Penn. 129, 10 Atl. (2d) 425;

WHEREFORE, your petitioner prays that a writ of certiorari issue out of and under the seal of this Honorable Court directed to the United States Circuit Court of Appeals for the Ninth Circuit, commanding that court to certify and send to this court, for its review and determination, on a day certain to be therein named, a full and complete transcript of the record and of all proceedings in said case numbered on its docket 10,864, that the judgment of said Circuit Court be reversed, and that petitioner have such other and further relief in the premises as to this court may seem proper.

CARLOS R. FREITAS,
Counsel for Petitioner.

A. E. BAGSHAW,
District Attorney,
Marin County, California,
Of Counsel.